vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6693 OF 2005

Suvarna M. Naniwadekar ... Petitioner

V/s.

Nandkishor R. Agarwal & Anr. ... Respondents

Ms.Chandana Salgaocar-Radia for Petitioner
Mr.Surel Shah with Mr.M.M. Shah for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 4, 2005**

P.C.:

. The Petition challenges the concurrent findings of fact of the Courts below. The case made out in the plaint is that the suit premises were not in use for 6 months preceding the filing of the suit, without reasonable cause. It is submitted on behalf of the Petitioner that it is necessary for the landlord to prove his case that the premises were not in use for the stipulated period and that they were not in use without reasonable cause. Reliance is placed on a letter issued by the landlord on 30.3.2002 to contend that it indicates that the landlord had accepted the fact that the tenants were residing in the suit premises during the relevant period.

2. Both the Courts below have considered the effect of this letter. There is no dispute that the defendants have not examined themselves at all. The landlord's case has been believed by both the Courts below and I see no reason to interfere with the same. A submission is made on behalf of the Petitioner that the onus was on the landlord to prove that the premises were not in use without reasonable cause contrary to the judgment in *Chandrakant Babubhai Tanna v/s. Ratanbai Viraji Thakkar*, **2004(1) ALL MR 588**. A learned Single Judge of this Court has held in that case that the onus is on the tenant to establish the fact that he was not in use of the premises for a reasonable cause. Both the Courts below have considered the evidence on record and have found that the landlord had proved his case under section 13(1)(k) of the Bombay Rent Act. I see no infirmity in the same. Petition rejected.